IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.469 OF 1995

1. Sanjay Shivram Vichare
Adult, Hindu, Indian
Inhabitant residing at
Dilip Vaiti Chawl, Louis
Wadi, Thane

2. Paul Francis Sebastian
Adult, Christian, Indian
Inhabitant, residing at
Dilip Vaiti Chawl,
Louis Wadi, Thane

3. Suhas Achyut Kambli
Adult Hindu, Indian
Inhabitant residing at
Shastri Nagar, Thane

4. Abhimanyu Shravan Pawar
Adult, Hindu, Indian
Inhabitant residing at
R.No. 2047, Bldg. No.48
Vartak Nagar, Thane
(All are presently
lodged at Thane Dist.
Prison, Thane ..Appellants

Versus

The State of Maharashtra
(At the instance of Vartak
Nagar Police Station, in
C.R.No. I-196/85 ..Respondent

....

Mr.Raja Thakre with Mr.Shreeram Shirsat
with Advocates Mr.Madhukar Dalvi for appellants
Mr.A.S.Shitole A.P.P. for State

....

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 17,2004

ORAL JUDGMENT:

1. Through this appeal, the appellants i.e. original accused nos.1 to 4 have challenged the judgment and order dated 14th September, 1995 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.535 of 1987. By the said judgment and order, the learned Judge convicted all the appellants under Section 307 read with Section 34 of IPC and sentenced each of them to R.I. for five years and to pay a fine of Rs.500/- in default S.I. for two months.

2. Briefly stated the prosecution case is as under:

. That the complainant P.W.1 Vilas Bhaskar Sawant was working as a Machine Operator in J.K.Combing Company at the relevant time. On 30.12.1985 at about 8.30 a.m. complainant proceeded to the company from his house. He walked for some distance. Thereafter, he found that one person who was acquainted with him, was proceeding on scooter. The complainant asked him to stop the scooter.

Complainant requested him to leave him at Vartak Nagar Naka. The complainant sat behind him on the scooter. They reached near Shivaji Nagar stop at about 8.45 a.m., at that time, accused no.1 Sanjay Vichare obstructed the scooter. Accused nos.2 to 4 i.e. Paul Francis Sebestian, Suhas Achyut Kambli and Abhimanyu Shrawan Pawar were with accused no.1 Sanjay Vichare at that time. The accused nos.1 to 4 pulled the complainant Vilas from the scooter. Accused no.1 assaulted him on the little finger and index finger of his right hand by knife. Complainant Vilas caught hold of accused no.1. At that time, accused no.2 assaulted Vilas on his head with knife. Thereafter, accused nos.3 and 4 assaulted the complainant on his head and stomach. Complainant Vilas sustained bleeding injuries. Within short time, his wife P.W.2 Vaibhavi Sawant and one Nandkumar came there and the complainant was taken to Vartak Nagar Police Station. The police took him to the civil hospital, Thane for medical treatment. The statement of the complainant came to be recorded in the hospital (Exhibit-27). After completion of investigation, the charge sheet came to be filed.

3. In due course the case was committed to the Court of Sessions for trial. The charge was framed

against the appellants-accused under Section 307 read with Section 34 of IPC. All the accused pleaded not guilty and claimed to be tried. The defence of the accused is that marriage of sister of accused no.1 took place on 22nd May,1983. On that day, when the sister of accused no.1, her husband and others were proceeding towards the temple in a procession, at that time, the complainant Vilas assaulted the relatives of accused no.1 under the influence of liquor and hence, elder brother of accused no.1 and accused no.1, lodged complaint against complainant Vilas. Vilas came to be arrested on account of this complaint and hence, he had grudge against the accused persons.

. It is the defence of accused nos. 2 and 4 that they were also present in the said marriage procession and they had also gone to the police station when the complaint came to be filed. As they are the witnesses in the said case, they have been falsely implicated in the present case.

. As far as the accused no.3 Suhas is concerned, it is his case that the complainant Vilas had beaten him at Vartak Nagar Naka in the year 1977. On account of this, he had lodged a complaint with the police. The complainant Vilas was insisting to

accused no.3 to withdraw the complaint, however, he refused to do so, hence, he has been falsely involved in the present case.

4. After going through the evidence adduced by the prosecution, the learned Judge convicted and sentenced the appellants as stated in para no.1 above. Hence, this appeal.

5. I have heard Shri.Thakre, the learned advocate for the appellants and Mr.A.S.Shitole, the learned A.P.P. for the State. I have also perused the entire material on record. After carefully considering the matter, I am of the opinion that the learned Sessions Judge has rightly convicted the appellants under Section 307 read with Section 34 of IPC.

6. The star witness in the present case is the complainant P.W.1 Vilas Sawant. One more witness has been examined by the prosecution as an eye witness i.e. P.W.2 Vaibhavi Sawant. However, the learned Sessions Judge has disbelieved her evidence. I find that the reasons given by the learned Addl. Sessions Judge for disbelieving her evidence, appear to be quite sound and no fault can be found with the same. The evidence of other witnesses does not in

any manner help the prosecution in establishing the prosecution case. Hence, I do not find it necessary to deal with the same.

7. As stated earlier, the complainant P.W.1 Vilas Sawant is the star witness. The complainant P.W.1 Vilas has stated in his evidence that on the date of incident i.e. on 30th December, 1985 at about 8.30 a.m. he was proceeding towards his company. After he walked for some distance, he saw that one person acquainted with him, was proceeding on scooter. Thereafter, he asked the said person to stop and requested him to leave him at Vartak Nagar Naka. Thereafter, complainant sat on the scooter. When they reached near Shivaji Nagar stop, accused no.1 Sanjay Vichare obstructed the scooter. At that time, three other accused were present. All the accused pulled him from the scooter. Thereafter, accused no.1 assaulted him on the little finger of his left hand and index finger of his right hand by knife. Complainant Vilas caught hold of accused no.1. At that time, accused no.2 Paul Sebastian assaulted Vilas on his head with knife and accused no.3 Suhas and accused no.4 Abhimanyu assaulted Vilas on his head and stomach by knife. Vilas sustained bleeding injuries on his head, stomach and hands due to the said assault. Thereafter, some

persons came there and took him to Vartak Nagar Police Station. The police took him to the civil hospital for treatment. His statement came to be recorded at civil hospital (Exhibit-27). Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony on the aspect of assault by all the four accused persons on him with knife. It is also material to note that the incident occurred in a public place in broad day light. All the accused persons were known to the complainant prior to the incident. In such case, it cannot be said that there was any case of mistaken identity. Thus, looking to the evidence on record, the prosecution has proved that all the four accused persons had assaulted complainant Vilas with knives.

8. The evidence of Vilas is corroborated by the medical evidence. P.W.11 Dr. Jamil Ahmed examined the complainant Vilas and he found eight injuries on the person of Vilas. Dr.Jamil Ahmed has stated in his evidence that the injuries were serious injuries and in the ordinary course of nature, the injuries were sufficient to cause death. According to Dr.Jamil Ahmed, the injuries were possible by knife. Thus, the medical evidence is consistent with the version of the complainant Vilas Sawant who is the injured witness in the present case.

9. Thus, looking to the evidence on record, I am of the opinion that the learned Addl.Sessions Judge has rightly convicted all the four accused-appellants under Section 307 read with Section 34 of IPC. At this stage, the learned advocate appearing for the appellants, has submitted that the incident had occurred almost twenty years ago. It is submitted that besides the present case, the appellants have clean record and neither prior to the incident nor thereafter the appellants have been involved in any other matter. Thus, it is submitted that except the present case, all the appellants have clean record. It is further submitted that all the appellants are married and the appellants no.1 and 2 have two minor children each. As far as appellant nos.3 and 4 are concerned, it is stated that their family members are dependent on them. It is further submitted that from the evidence of the complainant himself, it is clear that he was involved in five criminal cases and one of them, was assault with knife on one Bhalchandra Supur Patil in the company at night time. The said Bhalchandra Patil was a member of a rival union. Looking to all these facts, it is prayed that sentence of imprisonment imposed on the appellants may be reduced to the period already undergone by them and the appellants are willing to

pay higher amount of fine. All the four appellants are present before the Court. I have heard them. They have prayed that the period of imprisonment imposed on them by the learned Sessions Judge, may be reduced to the period already undergone by them and they are willing to pay higher fine amount and the major part of the fine amount may be given to the complainant as compensation.

10. Looking to all the above facts, I am inclined to reduce the sentence of imprisonment to the period of imprisonment already undergone by the appellants and to increase the fine amount from Rs.500/-each to Rs.15,000/- each.

11. In view of the above, the judgment and order of conviction dated 14th September, 1995 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 535 of 1987 for the offence under Section 307 read with Section 34 of IPC, is confirmed. However, the sentence of imprisonment as imposed by the learned Additional Sessions Judge, is reduced to the period already undergone by the appellants. The fine amount of Rs.500/- each as imposed by the learned Additional Sessions Judge is enhanced to Rs.15,000/- each. It is stated that earlier fine amount of Rs.500/- each, has been deposited by the

appellants before the trial Court. In such case, each of the appellants are directed to deposit additional fine amount of Rs.14,500/- before the trial Court.

12. At this stage, the learned advocate for the appellants has prayed that four weeks time be granted to the appellants to deposit additional fine amount. Accordingly, four weeks time is granted to the appellants to deposit additional fine amount of Rs.14,500/- before the trial Court. On deposit of the additional fine amount, out of the said amount of fine, Rs.50,000/- be paid to the complainant Vilas Bhaskar Sawant as compensation. After deposit of additional fine amount, the bail bonds of the accused shall stand cancelled.

. Appeal is partly allowed in the above terms.

. Authenticated copy of this judgment be made available to the parties.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.469 OF 1995
(Sanjay S.Vichare and others Vs. The State of Maharashtra)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Raja Thakre with Mr.Shreeram Shirsat with Mr.Madhukar Dalvi, Advocates for Appellants
Mr.A.S.Shitole, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : DECEMBER 17, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The judgment and order of conviction dated 14th September, 1995 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 535 of 1987 for the offence under Section 307 read with Section 34 of IPC, is confirmed. However, the sentence of imprisonment as imposed by the learned Additional Sessions Judge, is reduced to the period already undergone by the appellants. The fine amount of Rs.500/- as imposed by the learned Additional Sessions Judge is enhanced to Rs.15,000/- each. It is stated that earlier fine amount of Rs.500/- each, has been deposited by the appellants before the trial Court. In such case, each of the appellants are directed to pay additional fine amount of Rs.14,500/- before the trial Court. At this stage, the learned advocate for the appellants

has prayed that four weeks time be granted to the appellants to deposit additional fine amount. Accordingly, four weeks time is granted to the appellants to deposit additional fine amount of Rs.14,500/- before the trial Court. On deposit of such additional fine amount, out of the said amount of fine, Rs.50,000/- be paid to the complainant Vilas Bhaskar Sawant as compensation. After deposit of additional fine amount, the bail bonds of the accused shall stand cancelled.

. Appeal is partly allowed in the above terms.

. Authenticated copy of this judgment be made available to the parties.

[V.K.TAHILRAMANI,J.]